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EXAMINER				
LE, MARK T				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,218

Applicant(s)

MARKUS, WOLFGANG

Examiner

MARK T. LE

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

1. The abstract of the disclosure is objected to because it should focus on the technical features of the invention, and avoid statements of speculations. Correction is required. See MPEP § 608.01(b).
2. The disclosure is objected to because of the following problems: In the specification, reference numeral 2 at certain parts of the specification is referred to as a frame-like structure (2) and at other parts of the specification is referred to as longitudinal unit (2); and reference numeral 15 at certain parts of the specification is referred to as standard connecting means (15), and at other parts of the specification is referred to as ribbed plate (15) or rail fastening and rail support (15). Such inconsistencies are confusing. Further, the list of references on page 12 of the specification should be deleted because it is a redundant part of the specification. Applicant is suggested to proofread and revise the specification.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the prefabricated parts being pre-curved, as recited in instant claim 6; the noise absorbing concrete layer, as recited in instant claim 14; and the horizontal cylinder openings, recited in claim 26, must be shown or canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 2-3, it is not clear as to which structures of the present invention constitute the trackway rail carriers; line 2, the expression "frame-like" is indefinite because it is not clear as to what structures are covered by the claimed "frame-like"; line 2, regarding the word "wherein", it is not clear as to whether it refers to the fixed track or the frame-like structure. Further the use of the word "like" throughout other claims must also be avoided.

In claim 2, it is not clear as to whether the concrete prefabricated parts (3) are the trackway rail carriers. If it is so, the relationship between concrete prefabricated parts (3) and the rail carriers should be clearly defined to prevent confusions.

In claim 3, it is not clear as to whether the reinforced concrete composite piles recited in line 3 refer to the piles recited in claim 1.

In claim 6, line 3, "the loads" and "the final state" lack antecedent basis.

In claim 7, lines 2-3, the expression "the parallel-running ... parts" lacks antecedent basis; and line 3, "the sleeper body" lacks antecedent basis. If change is made to said expression in claim 7, the same change should also be made to claim 8.

In claim 9, lines 2-3, "the final fixing", line 3, "the longitudinal sleeper unit (2)", and line 3, "the space" lack antecedent basis.

In claim 12, line 3, "the factory" lacks antecedent basis.

In claim 13, line 2, "the surface" lacks antecedent basis.

In claim 14, lines 3-4, "the casting concrete body" lacks antecedent basis.

In claim 15, line 3, "the casting concrete body" lacks antecedent basis; and line 4, "the frost protection layer" lacks antecedent basis.

In claim 21, line 2, "the rail" lacks antecedent basis; line 3, "the conventional standard connecting means" is indefinite because it is not clear as to what structures are covered by the instant claimed "conventional connecting means"; line 4, "the new type of sleeper bodies" lacks antecedent basis; line 5, "the fastening profiles" lacks antecedent basis; line 6, "the rail position" lacks antecedent basis; and lines 6-7, "the rail fastening spacing" lack antecedent basis.

In claim 26, it is not clear as to what structures of the present invention constitute the instant claimed horizontal cylindrical openings recited in line 4 of claim 26.

The above noted problems are merely exemplary. Applicant is suggested to rewrite the instant claims.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 7-14, 17-21 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snelling (US 964,190) in view of Lamb (US 1,116,446).

Snelling discloses a fixed track for rail traffics, similar to that recited in the instant claims, including a frame structure that is formed by elements E,D,D',F, and carriers A that are also readable as reinforced concrete prefabricated parts or sleepers.

Regarding the instant claimed supporting piles, note that the use of supporting piles for railroad tracks are well known. Note for example, supporting piles 6-10 of Lamb.

In view of Lamb, it would have been obvious to one skilled in the art to further provide supporting piles, similar to that taught by Lamb, in the structure of Snelling for strengthening the track supports.

Regarding the instant claimed space between the sleepers being filled with concrete, as recited in instant claims 9-10, note that the filled material C of Snelling may also be concrete, as described in lines 56-57 of Snelling, which is readable as a "high-early-strength casting concrete" as broadly claimed. On the other hand, it would have been obvious to one skilled in the art to use a commercially available high strength

concrete material for filling space C of Snelling so as to create a strong and stable track support structure.

Regarding the instant claimed connecting steel structures, recited in claim 8, and the instant claimed steel insert, as recited in instant claim 11, note connecting rods E,D,D',F of Snelling, and it would have been obvious to one skilled in the art to use conventional reinforcement steel rods for forming such connecting rods of Snelling because they are strong and inexpensive.

Regarding claim 12, note that the fastening profiles of prefabricated parts A shown in Figure 1 of Snelling are capable of being used as means for allowing fastening of additional parts as claimed.

Regarding claim 13, consider the top surface of structure C in the space between prefabricated parts A of Snelling.

Regarding the instant claimed noise-absorbing concrete layer, recited in instant claim 14, note that the top layer of concrete body C of Snelling is readable as a noise-absorbing concrete layer as broadly claimed.

Regarding claim 17, consider channel B of Snelling.

Regarding instant claims 18 and 19, note that in the structure of Lamb, as shown in Figure 4, sleeper 3 is anchored onto piles 9; therefore, upon incorporating the teaching of Lamb into the structure of the structure of Snelling, it would have been obvious to one skilled in the art to anchor sleepers A of Snelling on the piles, in a manner similar to sleeper 3 of Lamb is anchored on pile 9, so as to achieve the expected advantages thereof. As to whether the piles are made from steel or concrete,

note that as a matter of design choice, it would have been obvious to one skilled in the art to select a known material, such as steel or concrete, to form the piles of Snelling, as modified, so as to achieve the expected advantages of such material, i.e. in term of costs, strength, durability and/or availability. Regarding the instant claimed method of setting the piles, as recited in the last part of claims 18 and 19, it is not found to be patentably significant in the apparatus claim.

Regarding claim 21, consider the connecting means shown in Figure 1 of Snelling that secures rails T to the fastening profiles of prefabricated parts A.

Regarding claim 26, consider the cylindrical openings or transverse channels on tops of prefabricated parts A of Snelling that accommodate bars F.

Regarding claim 27, consider the structure shown in Figure 1 of Snelling, wherein, parts A are obviously preassembled with rods D,D' and E.

7. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snelling (US 964,190) in view of Wilson (US 1,118,251).

Snelling discloses a fixed track for rail traffics, similar to that recited in the instant claims, including a frame structure that is formed by elements E,D,D',F and carriers A that are also readable as reinforced concrete prefabricated parts or sleepers.

Regarding the instant claimed supporting piles, note that the use of supporting piles for railroad tracks are well known. Note for example, supporting concrete piles 2 of Wilson.

In view of Wilson, it would have been obvious to one skilled in the art to further provide supporting piles, similar to that taught by Wilson, in the structure of Snelling for

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strengthening the track supports. Regarding the instant claimed method of setting the piles, as recited in the last part of claim 3, it is not found to be patentably significant in the apparatus claim.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kaczmarek (US 6,342,287).

Regarding the instant claimed mat provided between the rail and the substructure, as recited in instant claim 25, consider the mat shown in Figure 3 of Kaczmarek which is designed for use as claimed. In view of Kaczmarek, it would have been obvious to one skilled in the art to use mats, similar to that taught by Kaczmarek, in between the rail and the substructure of Snelling for damping vibrations, and thus reducing noises.

9. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 21 above, and further in view of Lundie (US 1,606,309).

Regarding the instant claimed ribbed plate, as recited in instant claims 22-24, consider ribbed plate 11 of Lundie. In view of Lundie, it would have been obvious to one skilled in the art to use ribbed plate, similar to that taught by Lundie, in the structure of Snelling for supporting the rails; wherein, the ribbed plate are prevented from undesired transverse movements by the ribs, and the inclination of the rail is adjustable by the angle of ribbed plate.

10. Claims 4-5 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 or 9 above, and further in view of Hanig (US 3,756,507).

Regarding the instant claimed foil under the concrete body, consider the structure of Hanig including foil 13 or 16. In view of Hanig, it would have been obvious to one skilled in the art to improve the stability of the track structure of Snelling by including a base structure covered by a foil, similar to that of Hanig, wherein, such foil also effectively acts as sealing as recited in the instant claims.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 above, and further in view of Sahlberg (US 1,979,642).

Regarding the instant claimed prefabricated parts being pre-curved to counter loads, as recited in instant claim 6, note that such concept of configuring an elongated load supporting structure with an upward curve to counter loads placed thereon is well known. Note for example, claim 1 of Sahlberg, wherein, the beam is pre-curved to counter loads to be placed thereon. Therefore, it would have been obvious to one skilled in the art to improve prefabricated parts or beams A of Sneller by curving it, as taught by Sahlberg, so as to counter the loads to be placed thereon.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Le/
Primary Examiner
Art Unit 3617

mle
6/18/08